

DONNA JONES)
 Claimant)
 VS.)
 Respondent)
STATE OF KANSAS)
 Respondent)
 AND)
STATE SELF-INSURANCE FUND)
 Insurance Carrier)

Docket No. 217,708

The Administrative Law Judge found claimant sustained two separate accidents and, therefore, two scheduled injuries to her arms. Claimant, however, contends her claim should be treated as an unscheduled injury to the body because she was attempting to protect her right arm from a resident's attack when the left arm injury occurred. Because claimant regularly worked with aggressive residents, claimant contends there are special circumstances here that compel the Appeals Board to find the left arm injury a natural and

probable consequence of the right arm injury. In the alternative, claimant contends simultaneous repetitive use caused her bilateral arm injuries.

The only issue before the Appeals Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) When stipulations were taken at the June 1997 regular hearing, claimant alleged she sustained personal injury by accident from February 1996 and continuing each and every day through May 29, 1996. The respondent denied claimant sustained repetitive trauma during the period alleged. But the respondent, however, did admit that claimant injured her right arm at work on April 5, 1996, and her left arm at work on May 29, 1996.
- (2) The claimant, Donna Jones, worked for the State at the Winfield State Hospital as a mental retardation technician. In that job, Ms. Jones was responsible for feeding, bathing, clothing, and toileting mentally and physically disabled patients, some of which were prone to violence.
- (3) In 1994, Ms. Jones experienced problems in her right arm that ultimately required surgery to the wrist and elbow. When her doctor released her to return to work, he restricted her to no lifting greater than 50 pounds on a frequent basis and no lifting greater than 20 to 25 pounds on an occasional basis. She testified she violated those restrictions to perform her job when she returned to work for the State after the surgery.
- (4) Although her symptoms plateaued after the 1994 surgery, in February 1996 Ms. Jones began having additional problems with her right arm. In April 1996, a resident tripped her causing her to fall and injure her right wrist. Following that accident, she missed several days of work.
- (5) Despite her painful right wrist, Ms. Jones returned to work while undergoing treatment from her hand surgeon. She then began using her left more to protect the right.
- (6) On May 29, 1996, a violent resident attacked Ms. Jones injuring her left arm when she turned to protect the previously injured right arm. The left arm then required medical treatment. This incident is the first occasion that Ms. Jones had problems with the left upper extremity.
- (7) Eventually Ms. Jones' hand surgeon, J. Mark Melhorn, M.D., operated on both arms. In mid-August 1996, the doctor performed a de Quervain's release and synovectomy on the right arm. Two weeks later, he performed the same operation on the left.

(8) Ms. Jones was off work for medical treatment between May 29, 1996, and November 6, 1996. On the latter date, Ms. Jones returned to work for the State under Dr. Melhorn's restrictions that limited her to medium work and lifting no greater than 50 pounds at any time and frequent lifting and carrying no greater than 25 pounds. While under those restrictions, she continued to work at the hospital until January 23, 1997, when she left work for emergency surgery unrelated to this claim.

(9) After recovering from the unrelated health problem, Ms. Jones attempted to return to her job at the hospital. But she was not permitted to return to work because the State would not accommodate the medical restrictions Ms. Jones had obtained from Pedro A. Murati, M.D., whom she had consulted in February 1997.

(10) When she testified at the regular hearing in June 1997, Ms. Jones was receiving unemployment benefits and looking for work.

(11) Board-certified orthopedic surgeon J. Mark Melhorn, M.D., began treating Ms. Jones in 1994 for right carpal tunnel syndrome. He is the doctor who performed surgery on her right wrist and elbow in August 1994. Regarding the injuries involved in the current claim, he diagnosed bilateral de Quervain's and in August 1996 performed surgical releases. He believes Ms. Jones should be limited to the medium level of work defined by OSHA as lifting no greater than 50 pounds on any occasion and limiting frequent lifting to 25 pounds. He believes Ms. Jones has a 3.1 percent permanent partial functional impairment to each forearm, which converts to a 4 percent whole body functional impairment, as a result of the de Quervain's.

(12) Dr. Murati examined Ms. Jones in February 1997 at her attorney's request. The history he gathered from her indicated she had sustained two work-related accidents, one in 1994 and the other in 1996. Also, Ms. Jones reported the continuous use of her hands caused pain and numbness first in her right hand and arm and next in her left hand and arm. He had no history of the April 1996 trip and fall or the May 1996 attack. He diagnosed status post-right carpal tunnel syndrome, right ulnar cubital syndrome and right de Quervain's, status post-left de Quervain's, probable left carpal tunnel syndrome, probable left ulnar cubital syndrome, and bilateral lateral epicondylitis. He believes Ms. Jones should observe the following permanent medical restrictions:

No heavy grasp with the bilateral upper extremities, occasional repetitive hand controls with the left, frequent on the right. Occasional repetitive grasp and grab with the left and frequent for the right. Occasional lift, carry, push, pull 20 pounds, frequently 10 pounds, constantly 5 pounds. No use of hooks or knives. No transferring of patients or other activities with heavy grasp. No contact with potentially violent people.

(13) Dr. Murati also believes surgery is indicated for the left carpal tunnel syndrome and the left ulnar cubital syndrome. He believes Ms. Jones has a 28 percent whole body

permanent functional impairment that is comprised of a 25 percent permanent impairment to the right upper extremity and a 25 percent permanent impairment to the left. And that she has lost the ability to perform 50 percent of her former job tasks.

(14) The Appeals Board adopts the findings set forth in the Award to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

The Award should be affirmed.

When a worker is injured at work, every direct and natural consequence flowing from that injury, including new and distinct injuries, are compensable under the Workers Compensation Act. Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976). That rule, however, is not applicable when the facts disclose a new and separate accident. Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973).

The Appeals Board finds the May 29, 1996, injury was not a natural consequence of the injury to the right arm. Ms. Jones seems to argue that the left arm injury was a natural consequence because she worked around violent residents and, therefore, it was foreseeable. Because the left arm injury was caused by a trauma or force totally unrelated to the right arm injury, the Appeals Board finds Ms. Jones sustained a new and separate accident on May 29, 1996.

Ms. Jones has also suggested she injured her arms simultaneously and, therefore, is entitled to permanent partial general disability benefits for a nonscheduled injury under K.S.A. 1995 Supp. 44-510e.

Neither Dr. Melhorn nor Dr. Murati testified that Ms. Jones sustained simultaneous injuries to her arms. Such testimony is critical in sustaining a worker's burden of proving simultaneous injury unless the facts are such that it is evident the injury occurred in that manner. The Appeals Board agrees with the conclusion reached by the Administrative Law Judge that Ms. Jones sustained two separate and distinct work-related accidents and, therefore, she should be compensated for two scheduled injuries under K.S.A. 1995 Supp. 44-510d.

The Administrative Law Judge averaged the functional impairment ratings provided by Drs. Melhorn and Murati and concluded that Ms. Jones sustained a 5.55 percent functional impairment to the right upper extremity and a 9.05 percent functional impairment to the left. The Appeals Board agrees.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated November 17, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes is affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Jeffery R. Brewer, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director